

Board of Equalization Rules for Tax Appeals

California Code of Regulations
Title 18. Public Revenues
Division 2.1. State Board of Equalization – Rules for Tax Appeals

CHAPTER 6. TAXPAYER BILL OF RIGHTS REIMBURSEMENT CLAIMS

5600. DEFINITIONS. BOARD HEARING PROCEDURES: TAXES AFFECTED BY THIS ARTICLE.

a) The definitions in sections 5511 and 5512 apply to this chapter, and Board hearings on claims filed under this chapter will be conducted under the hearing procedures set forth in chapter 5 of this division, commencing with section 5510, except as otherwise noted.

b) This chapter applies to reimbursement claims under any of the following programs:

Corporate Franchise and Income Tax --

Personal Income and Bank and Corporation Income Tax
Revenue and Taxation Code Sections 18401-19802

Business and Property Taxes --

Alcoholic Beverage Tax
California Constitution Article XX, Section 22;
Revenue and Taxation Code Sections 32001-32557

California Tire Fee
Public Resources Code Sections 42860-42895;
Revenue and Taxation Code Sections 55001-55381

Childhood Lead Poisoning Prevention Fee
Health and Safety Code Section 105310;
Revenue and Taxation Code Sections 43001-43651

Cigarette and Tobacco Products Tax
California Constitution Article XIII B, Section 12;
Revenue and Taxation Code Sections 30001-30481

Diesel Fuel Tax
Revenue and Taxation Code Sections 60001-60709

Emergency Telephone Users Surcharge
Revenue and Taxation Code Sections 41001-41176

Energy Resources Surcharge
Revenue and Taxation Code Sections 40001-40216

Hazardous Substances Tax
Revenue and Taxation Code Sections 43001-43651

Integrated Waste Management Fee
Revenue and Taxation Code Sections 45001-45984

Marine Invasive Species Fee Collection Law
Public Resources Code Sections 71200-71271;
Revenue and Taxation Code Sections 44000-44008, 55001-55381

Motor Vehicle Fuel Taxes
California Constitution Article XIX, Sections 1-9;
Revenue and Taxation Code Sections 7301-8526

Natural Gas Surcharge
Public Utilities Code Sections 890-900;

Revenue and Taxation Code Sections 55001-55381

Occupational Lead Poisoning Prevention Fee
Health and Safety Code Section 105190;
Revenue and Taxation Code Sections 43001-43651

Oil Spill Response, Prevention and Administration Fees
Revenue and Taxation Code Sections 46001-46751

Private Railroad Car Tax
California Constitution Article XIII, Section 19;
Revenue and Taxation Code Sections 11201-11702

Sales and Use Tax
(including State-administered local sales, transactions and use taxes)
Revenue and Taxation Code Sections 6001-7279.6

Timber Yield Tax
Revenue and Taxation Code Sections 423.5, 431-437, 38101-38908

Underground Storage Tank Maintenance Fee
Revenue and Taxation Code Sections 50101-50162

Use Fuel Tax Law
Revenue and Taxation Code Sections 8601-9355

(c) To the extent that provisions in this chapter are in conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement are controlling.

Note: Authority: Section 15606(a), Government Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New article 9 (sections 5090-5095) and section adopted 11-19-97; effective 4-8-98.
2. Amendment of subsection (b) 7-29-99; effective 10-31-99.
3. Amendment of subsection (b) and Note 3-8-01; effective 7-6-01.
4. Amendment of subsection (b) 7-26-04; effective 8-25-04.

5601. ELIGIBLE CLAIMS.

Only those expenses that were incurred after the date of the notice of determination, jeopardy determination or claim for refund in business or property tax cases and after the date of filing an appeal to the Board in corporate franchise and income tax cases are eligible for reimbursement. Expenses incurred in a business tax or Timber Yield Tax case are "related to a hearing before the board" and reimbursable only if the claimant sought Board review of an unfavorable Decision and Recommendation issued by the Appeals Division and only if the Board finds that the action taken by Board Staff was unreasonable. To determine whether Board Staff has been unreasonable, the Board will consider whether Board Staff has established that its position was substantially justified. This means that a taxpayer whose petition for redetermination or claim for refund is not granted does not have an eligible claim. All expenses incurred in corporate franchise or income tax appeals to the Board are "related to a hearing before the board."

Note: Authority: Section 15606(a), Government Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New section adopted 11-19-97; effective 4-8-98.
2. Amendment of section and Note 3-8-01; effective 7-6-01.
3. Amendment of section 5-25-04; effective 8-25-04.

5602. REASONABLE FEES.

Reasonable fees for professional representation before the Board shall be as provided in Revenue and Taxation Code section 7156, subdivision (c)(1)(B)(iii).

Note: Authority: Section 15606(a), Government Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 44003, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 7156, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New section adopted 11-19-97; effective 4-8-98.
2. Change without regulatory effect amending Note filed 6-11-01.

5603. CLAIM PROCEDURE.

(a) Claim Form. The claim must be filed with the Chief of Board Proceedings on the Taxpayers' Bill of Rights Reimbursement Claim form (7/98), which is hereby incorporated by reference.

(b) One Year Filing Deadline; Complete Claim Form. The completed claim form must be filed within one year of the date the decision of the Board becomes final. The Chief of Board Proceedings, in his or her discretion, may grant extensions of time to file a completed claim form upon a showing of reasonable cause, if the written request is filed with the Chief of Board Proceedings prior to the scheduled due date of the claim form. If the claim form filed is incomplete, the claimant will be granted 30 days additional time to complete the claim form. Failure to file a complete claim within the time granted will result in dismissal of the claim by the Chief of Board Proceedings.

(c) Dismissal of Ineligible Claim. The Chief of Board Proceedings must dismiss a claim when the Board previously disposed of the case at hearing without granting the petition for redetermination or claim for refund.

(d) Staff Statement. Within 60 days of the filing of a complete claim form, Board Staff and, when applicable, Franchise Tax Board staff, must submit a statement in response to the claim. The Chief of Board Proceedings, in his or her discretion, may grant extensions of time to file a staff statement upon a showing of reasonable cause, if a written request is filed with the Chief of Board Proceedings before the scheduled due date of the staff statement.

(e) Claimant Response. The staff statement(s) must be mailed to the claimant, who must be given the opportunity to respond within 60 days of service of the staff statement with additional written argument and/or documentation, including, but not limited to, declarations under penalty of perjury. The Chief of Board Proceedings, in his or her discretion, may grant extensions of time to file a response upon a showing of reasonable cause if the written request for extension is filed with the Chief of Board Proceedings before the scheduled due date of the response. If the claimant submits new information or documentation in the response, Board Staff or Franchise Tax Board staff may be given an additional 30 days to respond to the new material.

Note: Authority: Section 15606(a), Government Code; Section 42882; Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New section adopted 11-19-97; effective 4-8-98.
2. Amendment of subsection (a) 7-29-99; effective 10-31-99.
3. Amendment of subsections (c) and (d), repealer of subsection (e) and amendment of Note 3-8-01; effective 7-6-01.
4. Amendment of section 5-25-04; effective 8-25-04.

5604. ORAL HEARING ON REIMBURSEMENT CLAIM.

After the submission of documents described in section 5603, the claim will be scheduled for oral hearing before the Board. The claimant and, when applicable, the Franchise Tax Board will receive 60 days notice of the hearing date and time, and the procedures will be governed by chapter 5 of this division. Oral hearing may be waived by the taxpayer and the matter submitted for decision on the basis of the written submissions.

Note: Authority: Section 15606(a), Government Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New section adopted 11-19-97; effective 4-8-98.
2. Amendment of section 7-29-99; effective 10-31-99.
3. Amendment of section and Note 3-8-01; effective 7-6-01.

5605. NOTICE OF DECISION.

Whether or not an oral hearing is held on the claim, the Board will send written notice of its decision to the claimant, and, where applicable, to the Franchise Tax Board. Notwithstanding chapter 5 of this division, the Board's decision on the claim is final 30 days from the date it is mailed. Any proposed award of reimbursement must be available as a public record for at least 10 days prior to the effective date of the award, except appeals from actions of the Franchise Tax Board, which must be available as a public record for at least 10 days prior to the effective date of the determination.

Note: Authority: Section 15606(a), Government Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New section adopted 11-19-97; effective 4-8-98.
2. Amendment of section and Note 3-8-01; effective 7-6-01.

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